

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

HENRY JAMES WIMBERLY, JR.,

Petitioner,

v.

CARLTON POWERS, et. al.,

Respondents.

6:05-cv-41 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge G. Mallon Faircloth filed February 16, 2006, recommending that Defendant Nancy Hinkle's Motion to Dismiss (Doc. 28) be granted. (Doc. 49). Petitioner filed his timely objection to this recommendation on March 1, 2006 (Doc. 54). Also before the Court is a Recommendation from United States Magistrate Judge G. Mallon Faircloth filed February 16, 2006, recommending that Defendant Dixon Exterminating Company's Motion to Dismiss (Doc. 25) be granted.¹ (Doc. 50). Petitioner filed his timely objection to this recommendation on March 1, 2006. (Doc. 55).

I. Report and Recommendation on Defendant Nancy Hinkle's Motion to Dismiss

Defendant/Respondent Nancy Hinkle moves to dismiss the instant action based on Petitioner's alleged failure to state a claim for which relief may be granted. (Doc. 28). In his recommendation, the Magistrate Judge found that Petitioner was an inmate at the Thomas County Jail at the time of the filing of the instant complaint. (Doc. 49). It was further found that Petitioner filed this civil action pursuant to 42 U.S.C. § 1983, complaining about medical

¹ Also pending before the Court is Defendant Dixon Exterminating Company's Motion to Amend/Correct Motion to Dismiss (Doc. 35). Upon review of the instant Report and Recommendation, the Court finds the same to be based on Defendant's original Motion to Dismiss. (See Doc. 50). The Court further finds Petitioner's response brief and his subsequent objections to the Report and Recommendation to have been based on Defendant's original Motion to Dismiss. (See Docs. 41, 43, 46, 55). In light of these findings, and the Court's further finding that Defendant's motion to dismiss can be properly resolved without amendment, Defendant's Motion to Amend/Correct Motion to Dismiss (Doc. 35) is **DENIED AS MOOT**.

treatment he received at the jail after he was bit by what he claimed was a brown recluse spider. *Id.* It was further found that Petitioner makes reference to an article written in the *Thomasville Times Enterprise*, in response to allegations of spider bites at the Thomas County Jail, in which Defendant/Respondent Hinkle was quoted regarding the habits of brown recluse spiders. *Id.* The Magistrate Judge found that Petitioner makes no other mention of Defendant/Respondent Hinkle save allegations that she lied when she gave her quote to the newspaper. *Id.*

Based on the aforementioned findings, it was found that Petitioner failed to establish what, if any constitutional right Defendant/Respondent Hinkle may have violated. *Id.* It was further found that Defendant/Respondent Hinkle was a private citizen, not acting under color of state law. *Id.* Therefore, it was found that Petitioner's claims are without arguable basis in law. *Id.* In his objection to the instant report and recommendation, Petitioner seeks reconsideration of his Motion for State of Claim, which was necessarily reviewed and fully addressed by the Magistrate Judge in connection with the instant report and recommendation. (Doc. 49; *see also* Doc. 46).

Upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. 49) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Defendant Nancy Hinkle's Motion to Dismiss (Doc. 28) is **GRANTED**.

II. Report and Recommendation on Defendant Dixon Exterminating Company's Motion to Dismiss

Defendant/Respondent Dixon Exterminating Company moves to dismiss the instant action based on Petitioner's alleged failure to state a claim for which relief may be granted. (Doc. 25). In his recommendation, the Magistrate Judge found that Petitioner was an inmate at the Thomas County Jail at the time of the filing of the instant complaint; and that Petitioner filed this civil action pursuant to 42 U.S.C. § 1983, complaining about medical treatment he received at the jail after he was bitten by what he claimed was a brown recluse spider. (Doc. 50). It was further found that Petitioner alleges that Defendant Dixon was the exterminator who

treated the jail at which he was injured. *Id.* It was further found that Defendant Dixon asserts that it had a contract with the Thomas County Board of Commissioners from 1997 to 1998 and again from 1999 to 2000; and that it had not treated the Thomas County Jail since that time. *Id.*

Based on the aforementioned findings, it was found that Petitioner failed to establish what, if any constitutional right Defendant/Respondent Dixon may have violated. *Id.* It was further found that Defendant/Respondent Dixon was a private citizen, not acting under color of state law when this action accrued. *Id.* Therefore, it was found that Petitioner's claims are without arguable basis in law. *Id.* In his objection to the instant report and recommendation, Petitioner seeks reconsideration of his Motion for State of Claim, which was necessarily reviewed and fully addressed by the Magistrate Judge in connection with the instant report and recommendation. (Doc. 50; *see also* Doc. 46).

Upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. 50) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Defendant Dixon Exterminating Company's Motion to Dismiss (Doc. 25) is **GRANTED**. Additionally, Defendant Dixon Exterminating Company's Motion to Amend/Correct Motion to Dismiss (Doc. 35) is **DENIED AS MOOT**. *See supra* n. 1.

III. Conclusion

For the foregoing reasons, the Reports and Recommendations (Docs. 49, 50) are **ACCEPTED, ADOPTED**, and made the Orders of this Court. Accordingly, Defendant Dixon Exterminating Company's Motion to Dismiss (Doc. 25) is **GRANTED**; Defendant Nancy Hinkle's Motion to Dismiss (Doc. 28) is **GRANTED**; and Defendant Dixon Exterminating Company's Motion to Amend/Correct Motion to Dismiss (Doc. 35) is **DENIED AS MOOT**.

SO ORDERED, this 21st day of April, 2006.

/s/W. Louis Sands
W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT